

DISPOSITION: The Lipton Drug & Sales Co. filed an answer to the libel, to which answer the Government, on October 5, 1951, filed a motion for a summary judgment. On November 20, 1951, the court granted the Government's motion for a summary judgment based on the admissions in the claimant's answer that the drug was transported in interstate commerce without being labeled; and the court also ruled that the drug was subject to seizure as a misbranded drug. Judgment of condemnation and destruction was entered.

3868. Adulteration and misbranding of vitamin B₁₂. U. S. v. 105 Bottles * * *.
(F. D. C. No. 33603. Sample No. 56326-L.)

LIBEL FILED: July 25, 1952, Northern District of Ohio.

ALLEGED SHIPMENT: On or about May 29, 1952, by Addison Laboratories, from Philadelphia, Pa.

PRODUCT: 105 1-ounce bottles of *vitamin B₁₂* at Mansfield, Ohio. Analysis showed that the product contained 67 percent of the declared amount of vitamin B₁₂.

LABEL, IN PART: "Vitamin B₁₂ Drops 30 Micrograms per CC * * * In such doses as prescribed by a Physician * * * Mfg. For The Caldwell & Bloor Co. Mansfield, Ohio."

NATURE OF CHARGE: Adulteration, Section 501 (c), the strength of the article differed from that which it was represented to possess, namely, "Vitamin B₁₂ * * * 30 Micrograms per CC."

Misbranding, Section 502 (a), the label statement "Vitamin B₁₂ * * * 30 Micrograms per CC" was false and misleading as applied to the article, which contained less than that amount of vitamin B₁₂; and, Section 502 (f) (1), the labeling of the article failed to bear adequate directions for use.

DISPOSITION: September 12, 1952. Default decree of condemnation and destruction.

✓3869. Misbranding of Diaplex. U. S. v. 48 Pounds * * *. (F. D. C. No. 31964.
Sample No. 29638-L.)

LIBEL FILED: November 6, 1951, Western District of Washington.

ALLEGED SHIPMENT: On or about July 10, 1951, by Diaplex Laboratories, from Carr, Colo.

PRODUCT: 48 pounds of *Diaplex* at Seattle, Wash. Samples taken from other shipments of *Diaplex* were found to consist of a species of saltbush, such as *Atriplex canescens*.

NATURE OF CHARGE: Misbranding, Section 502 (f) (1), the labeling of the article failed to bear adequate directions for use for the purpose for which it was intended. The article was misbranded when introduced into, while in, and while held for sale after shipment in, interstate commerce.

DISPOSITION: May 7, 1952. Default decree of condemnation and destruction.

3870. Misbranding of Color-Therm devices. U. S. v. 8 Devices * * *. (F. D. C. No. 32471. Sample Nos. 16471-L, 16472-L.)

LIBEL FILED: January 29, 1952, Northern District of Oklahoma; amended libel filed on or about May 19, 1952.

ALLEGED SHIPMENT: One device, including one hand applicator, was shipped from Mission, Kans., to Wewoka, Okla., and delivered during 1949 to Claremore, Okla.; in addition, 7 unlabeled devices, including 7 hand applicators;

were shipped between June and August 1951, by Fred Gerkey, from Mission, Kans., to Claremore, Okla.

PRODUCT: 8 *Color-Therm devices*, 7 unlabeled and 1 labeled, in part, "Color Therm Dr. Fred Gerkey, Mission, Kansas," including 8 hand applicators, at Claremore, Okla., in possession of Mrs. Leatha N. Foley.

The devices consisted of tubes for producing colored lights similar to the so-called neon lights, together with electrical connections required to operate them.

NATURE OF CHARGE: Misbranding, Section 502 (f) (1), the labeling of the device failed to bear adequate directions for use for helping arthritis, rheumatism, paralysis, and aches and pains of other diseases, which were the conditions for which the device was intended. The device was misbranded when introduced into, and while held for sale after shipment in, interstate commerce.

DISPOSITION: Leatha N. Foley, claimant, filed an answer to the libel, and on or about June 19, 1952, the Government filed a motion for summary judgment, based on the pleadings and on the affidavit and deposition of Mrs. Foley, for the reason that there were no material issues of fact to be determined by the court and that the Government was entitled to a judgment as a matter of law. The court found that there was no controversial issue involved in the action and that the Government's motion for judgment should be sustained; and, accordingly, on September 30, 1952, the court entered a decree of condemnation and ordered that the devices and hand applicators be destroyed.

DRUGS ACTIONABLE BECAUSE OF CONTAMINATION WITH FILTH

3871. Adulteration of peppermint leaves, spearmint leaves, hellebore root, and lobelia leaves and lobelia herb. U. S. v. 2 Bales, etc. (and 1 other seizure action). (F. D. C. Nos. 30396, 30410. Sample Nos. 24131-L to 24135-L, incl.)

LIBELS FILED: January 25 and February 1, 1951, District of New Jersey.

ALLEGED SHIPMENT: On or about October 12 and November 20, 1950, by the Smoky Mountain Drug Co., from Bristol, Tenn.

PRODUCT: 2 bales containing a total of 245 pounds of *peppermint leaves*, 4 bales containing a total of 1,060 pounds of *spearmint leaves*, 1 bale containing 318 pounds of *hellebore root*, 2 bales containing a total of 508 pounds of *lobelia leaves*, and 18 bales, each containing 190 pounds, of *lobelia herb*, at Jersey City, N. J.

NATURE OF CHARGE: Adulteration, Section 501 (a) (1), the *hellebore root* consisted in whole or in part of a decomposed substance by reason of the presence of mold, and the other articles consisted in whole or in part of filthy substances by reason of the presence of rodent excreta, insects, and insect excreta; and, Section 501 (a) (2), the articles had been packed under insanitary conditions whereby they may have been contaminated with filth.

DISPOSITION: December 11, 1951. The libel proceedings against the above-mentioned products having been consolidated and the Smoky Mountain Drug Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered. The court ordered that the *spearmint leaves* and the *peppermint leaves* be destroyed and that the other products be released under bond for reconditioning, under the supervision of the Federal Security Agency. The *spearmint leaves* and the *peppermint leaves* were destroyed, and the